



To the Honorable Council
City of Norfolk, Virginia

July 21, 2015

From: David Ricks, Director
Department of Public Works

Subject: Cost Participation Agreement
between the City of Norfolk and
Norfolk Collegiate Upper School for
Storm Water Improvements

Reviewed:

Ronald H. Williams, Jr., Deputy City Manager

Ward/Superward: 2/6

Approved:

Marcus D. Jones, City Manager

Item Number:

R-6

I. **Recommendation:** Adopt Ordinance

II. **Applicant:** City of Norfolk

III. **Description:**

This agenda item is an Ordinance approving a Cost Participation Agreement between the City of Norfolk ("City") and Norfolk Collegiate Upper School ("Norfolk Collegiate") for storm water improvements at Suburban Parkway and Woodfin Avenue.

IV. **Analysis:**

Norfolk Collegiate currently has a public drainage easement running through their soccer field. The drainage easement contains a 15-21 inch storm water line that runs from Suburban Parkway to a tributary of the Lafayette River outfalling storm water. The storm water pipes and structures are owned, operated and maintained by the City through the Department of Public Works ("Public Works"). Collegiate intends to make substantial upgrades to the soccer field and desires to relocate the storm water line from its current location to the rights of way in Suburban Parkway and Woodfin Avenue. The new system will be conveyed to the City.

V. **Financial Impact**

Norfolk Collegiate requests the City contribute an amount to the project that would be equal to what the City would pay to rehabilitate the storm water line in-place. Public Works has determined that the existing storm water pipe could be upgraded using a slipline process for approximately \$43,000.00 under an existing Indefinite Deliveries Quantities contract for this specific type of work. Public Works also plans to remove the existing storm

water pipe. All other costs will be borne by Norfolk Collegiate with an estimated cost of over \$300,000.00. Work to be completed by Norfolk Collegiate will include storm drain pipes and structures, curb and gutter, sidewalks, ADA sidewalk ramp and associated pavement repairs. All new work will be performed by Norfolk Collegiate and their contractors. Public Works believes the rerouting of the storm water line would have a substantive benefit to the City in that its proposed location would improve storm water collection on Suburban Parkway and Woodfin Avenue and would improve access for maintenance, notwithstanding the new infrastructure. Public Works believes the project results in an overall benefit to the City that will exceed the amount of the City contribution.

VI. Environmental

There are no known environmental issues.

VII. Community Outreach/Notification

Public notification for this agenda item was conducted through the City's agenda notification process.

VIII. Board/Commission Action

N/A

IX. Coordination/Outreach

This letter has been coordinated with the Department of Public Works and the City Attorney's office.

Supporting Material from the City Attorney's Office and the Department of Public Works:

- Ordinance
- Cost Participation Agreement

7/13/15mm

Form and Correctness Approved: *BA*

By *[Signature]*
Office of the City Attorney

Contents Approved:

By *[Signature]*
DEPT.

Pursuant to Section 72 of the City Charter, I hereby certify that the money required for this item is in the city treasury to the credit of the fund from which it is drawn and not appropriated for any other purpose.

\$ 43,000.00

*Stormwater Operating Budget
Other Contractual Services*
2300 35 010 712 5307

[Signature]
Director of Finance

Account
7/13/15
Date

NORFOLK, VIRGINIA

ORDINANCE No.

AN ORDINANCE APPROVING A COST PARTICIPATION AGREEMENT BETWEEN THE CITY OF NORFOLK AND NORFOLK COLLEGIATE SCHOOL FOR STORM WATER IMPROVEMENTS AT SUBURBAN PARKWAY AND WOODFIN AVENUE.

- - -

WHEREAS, Norfolk Collegiate Upper School ("Collegiate"), located at 7336 Granby Street in the City of Norfolk, currently has a public drainage easement running through their soccer field. The drainage easement contains a 15-21 inch storm water line that runs from Suburban Parkway to a tributary of the Lafayette River outfalling storm water. The storm water pipes and structures are owned, operated and maintained by City of Norfolk through the Department of Public Works ("Public Works"). Collegiate intends to make substantial upgrades to the soccer field and desires to relocate the storm water line from its current location to the rights of way in Suburban Parkway and Woodfin Avenue. The new system will be conveyed to the City of Norfolk; and

WHEREAS, Collegiate requests the City contribute an amount to the project that would be equal to what the City would

pay to rehabilitate the storm water line in-place. Public Works has determined that the existing storm water pipe could be upgraded using a slipline process for approximately Forty-Three Thousand and 00/100 Dollars (\$43,000.00) under an existing Indefinite Deliveries Quantities contract for this specific type of work. Public Works Storm Water also plans to remove the existing storm water pipe. All other costs will be borne by Collegiate with an estimated cost of over \$300,000.00; and

WHEREAS, Public Works believes the rerouting of the storm water line would have a substantive benefit to the City in that its proposed location would improve storm water collection on Suburban Parkway and Woodfin Avenue and would improve access for maintenance, notwithstanding the new infrastructure. Public Works believes the project results in an overall benefit to the City; and

WHEREAS, the City desires to contribute \$43,000.00 to the costs of the improvements to be made by Collegiate; now, therefore

BE IT ORDAINED by the Council of the City of Norfolk:

Section 1:- That the Cost Participation Agreement between the City of Norfolk and Norfolk Collegiate Upper School, a copy of which is attached hereto as Exhibit A, wherein the City of Norfolk agrees to contribute Forty-Three Thousand and 00/100 Dollars (\$43,000.00) towards storm water improvements at Suburban Parkway and Woodfin Avenue, is hereby approved.

Section 2:- That the City Manager is authorized to correct, amend, or revise the Cost Participation Agreement as he may deem necessary in order to carry out the intent of the Council and to execute the Cost Participation Agreement, as corrected, amended, or revised in accordance herewith, for and on behalf of the City, subject however to approval as to form and correctness by the Office of the City Attorney.

Section 3:- That this ordinance shall be in effect from and after the date of its adoption.

COST PARTICIPATION AGREEMENT

(Waterline Relocation at Norfolk Collegiate)

THIS COST PARTICIPATION AGREEMENT is made as of the ____ day of _____, 2015, by and between the CITY OF NORFOLK, a municipal corporation of the Commonwealth of Virginia ("Norfolk") and NORFOLK COLLEGIATE SCHOOL, a _____ ("Collegiate") (individually, "Party" and collectively, the "Parties").

RECITALS:

WHEREAS, Norfolk Collegiate Upper School, located at 7336 Granby Street in the City of Norfolk, currently has a public drainage easement running through their soccer field. The drainage easement contains a 15-21 inch storm water line that runs from Suburban Parkway to a tributary of the Lafayette River outfalling storm water. The storm water pipes and structures are owned, operated and maintained by City of Norfolk through the Department of Public Works ("Public Works"). Collegiate intends to make substantial upgrades to the soccer field and desires to relocate the storm water line from its current location to the rights of way in Suburban Parkway and Woodfin Avenue. The new system will be conveyed to the City of Norfolk.

WHEREAS, Collegiate requests the City contribute an amount to the project that would be equal to what the City would pay to rehabilitate the storm water line in-place. Public Works has determined that the existing storm water pipe could be upgraded using a slipline process for approximately \$43,000.00 under an existing Indefinite Deliveries Quantities contract for this specific type of work. Public Works Storm Water also plans to remove the existing storm water pipe. All other costs will be borne by Collegiate with an estimated cost of over \$300,000.00. Work to be completed by Collegiate will include storm drain pipes and structures, curb and gutter, sidewalks, ADA sidewalk ramp and associated pavement repairs. All new work will be performed by Norfolk Collegiate and their contractors. The work to be completed by Collegiate is shown on Exhibit A attached hereto and made a part hereof (the "Improvements").

WHEREAS, Public Works believes the rerouting of the storm water line would have a substantive benefit to the City in that its proposed location would improve storm water collection on Suburban Parkway and Woodfin Avenue and would improve access for maintenance, notwithstanding the new infrastructure. Public Works believes the project results in an overall benefit to the City that may exceed the amount of the City contribution.

WHEREAS, the City agrees to contribute \$43,000.00 to the costs of the Improvements on the terms and conditions set forth herein; and

WHEREAS, Norfolk and Collegiate have entered into this Agreement for the purposes of setting forth each Party's respective obligations and responsibilities associated with the Improvements and the costs thereof.

AGREEMENT

NOW THEREFORE, for and in consideration of the mutual covenants stated herein, the Parties agree as follows:

1. IMPROVEMENTS. Collegiate shall cause the Improvements to be completed in a good and workmanlike manner, in accordance with all applicable laws, and in accordance with the plans attached hereto as Exhibit A (the "Plans").
2. PAYMENT OF COSTS. Norfolk shall contribute \$43,000.00 to the cost of the Improvements, which shall be payable by Norfolk to Collegiate within sixty (60) days after the date of final execution of this Agreement by the parties hereto.
3. INSPECTION. Norfolk shall provide its own inspection of the Improvements. The inspector(s) shall have the authority to assure the Improvements are constructed in accordance with the Plans. All inspections shall meet current Norfolk standards and practices. The Parties agree that the Improvements shall be complete when the final acceptance has been duly made by Norfolk.
5. CORRECTION OF CONSTRUCTION DEFECTS OF FACILITIES. Collegiate shall require the construction contractor to provide a performance and payment bond for the full amount of the cost of the Improvements. The construction contract shall also provide for a warranty of the work against defects in the Improvements and shall require the contractor to correct such defects that are reported by Norfolk within one (1) year of the acceptance of the Improvements.
6. TERMINATION. In the event of a default by either party under the terms of this Agreement, the defaulting Party, after receipt of written notice of such default, shall have thirty (30) days from the date such notice is given in which to cure the default; provided, however, such default is of such nature that is cannot reasonably be cured within such thirty (30) day period, the defaulting Party shall have such time to cure as is reasonably necessary, provided actions required to cure are commenced within the thirty (30) day period and prosecuted to completion in a prompt and diligent manner. If such default is not timely cured, the other Party may terminate this Agreement as of the date of the default notice.
7. NOTICES. All notices or other communications required or desired to be given with respect to this Agreement shall be in writing and shall be delivered by hand or by courier service, sent by registered or certified mail, return receipt requested, bearing adequate postage, or by reputable overnight carrier (such as Federal Express) and properly addressed as provided below. Each notice given by mail or overnight carrier shall be deemed to be given by the sender when received or refused by the Party intended to receive such notice; each notice delivered by hand or by courier service shall be deemed to have been given and received when actually received by the Party intended to receive such notice or when such Party refuses to accept delivery of such notice. Upon a change of address by either Party, such Party shall give written notice of such change to the other Party in accordance with the foregoing. Inability to deliver because of

changed address or status of which no notice was given shall be deemed to be receipt of the notice sent, effective as of the date such notice would otherwise have been received.

To Norfolk: City Manager
 City Hall
 810 Union Street, Suite 1100
 Norfolk, VA 23510

With a copy to: Director, Department of Utilities
 400 Granby Street
 Norfolk, VA 23510

With a copy to: City Attorney
 810 Union Street
 Suite 900
 Norfolk, Virginia 23510

To Collegiate: **[INSERT NOTICE ADDRESS]**

8. ASSIGNMENT. Neither Party shall assign its rights and duties under this Agreement without the prior written consent of the other Party, which consent shall not be unreasonably withheld, conditioned or delayed.

9. MODIFICATION. No modification to this Agreement shall be effective unless made in writing and executed by the authorized representatives of both Parties.

10. PERFORMANCE. The Parties shall perform their respective obligations to effectuate the intent of this Agreement in a timely and diligent manner, with time being of the essence.

11. DAMAGES TO PERSONS OR PROPERTY. To the extent permitted by law, and without waiving their sovereign immunity, the Parties shall be responsible to one another for any and all damages to persons or property caused by, resulting from, or arising out of any gross negligence or intentional wrongdoing on the part of the Party, its contractors, subcontractors, agents or employees under or in connection with this Agreement.

12. APPLICABLE LAW; COMPLIANCE WITH ALL LAWS; VENUE.

(A) This Agreement shall be deemed to be a Virginia contract and shall be governed as to all matters whether of validity, interpretations, obligations, performance or otherwise exclusively by the laws of the Commonwealth of Virginia, and all questions arising with respect thereto shall be determined in accordance with such laws. Regardless of where actually delivered and accepted, this Agreement shall be deemed to have been delivered and accepted by the Parties in the Commonwealth of Virginia.

(B) The Parties shall comply with all federal, state and local statutes, ordinances, and regulations now in effect or hereafter adopted, in the performance of their obligations set forth herein. The Parties shall at all times observe all health and safety measures and precautions necessary for the sanitary and safe performance of their obligations set forth herein.

(C) Any and all suits for any claims or for any and every breach or dispute arising out of this Agreement shall be maintained in the appropriate court of competent jurisdiction in the City of Norfolk.

13. FORCE MAJEURE. Neither Party shall be deemed to be in default with respect to the performance of any of the terms, covenants and conditions of this Agreement where a Party's failure to perform, or delay in performance, is caused by war, invasions, insurrection, blockage, domestic or foreign embargoes, riots, floods, earthquakes, fire, epidemics, lock-outs or other labor disturbance adversely affecting the Party's ability to perform, interruption, delay or other inadequacy of carriers or other transportation facilities of any type, the operation of domestic or foreign statutes, law, rules, rulings or regulations, interference by domestic, civil or military authority, agency or governmental unit, shortages of materials, services or supplies, failure of Parties with whom the Party has contracted for services to provide the same, or any other causes whether of the same or different character from those herein specified, which cannot be avoided or prevented by the due diligence of the Party. To the extent that any such cause of the Party's failure or delay in performance ceases, the period for the performance by the Party of any act required under the terms of this Agreement shall be extended for a reasonable period of time thereafter.

14. ENTIRE AGREEMENT. This Agreement constitutes the final, complete and exclusive written expression of the intents of the parties with respect to the subject matter hereof which will supersede all previous verbal and written communications, representations, agreements, promises or statements.

15. SEVERABILITY. If any one or more of the provisions contained in this Agreement shall for any reason be held to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect any other provision hereof, and this Agreement shall be construed as if such invalid, illegal or unenforceable provision was not contained herein.

16. HEADINGS. The titles of articles and sections of this Agreement are for reference purposes only and shall be of no binding effect.

17. WAIVER. The waiver by either party of any default or breach by the other party of any of the provisions of this Agreement shall not be deemed a continuing waiver or waiver of any other breach by the other party of the same or another provision of this Agreement.

18. BINDING EFFECT. The Agreement shall be binding upon and shall inure to the benefit of the parties hereto and their respective successors and assigns.

19. RIGHTS AND REMEDIES CUMULATIVE. The rights and remedies provided by this Agreement are cumulative and the use of any right or remedy by either party shall not preclude

or waive its rights to use any and all other remedies. Said rights and remedies are given in addition to any other rights the parties may have by law, statute, ordinance or otherwise.

20. AUTHORITY TO EXECUTE AGREEMENT. Each party represents that it has obtained all necessary approvals, consents and authorizations to enter into this Agreement and to perform its duties under this Agreement; the person executing this Agreement on its behalf has the authority to do so; upon execution and delivery of this Agreement by the parties, it is a valid and binding contract, enforceable in accordance with its terms; and the execution, delivery, and performance of this Agreement does not violate any bylaw, charter, regulation, law or other governing authority of the party.

21. COUNTERPARTS. This Agreement may be executed in any number of counterparts, each of which shall be deemed to be an original and all of which together shall comprise but a single document.

IN WITNESS WHEREOF, the Parties hereto have executed and sealed Agreement as of the day and year first above written.

CITY OF NORFOLK

By: _____
Name: Marcus D. Jones
Title: City Manager

ATTEST:

City Clerk

APPROVED AS TO CONTENT:

Director, Department of Public Works

APPROVED AS TO FORM AND CORRECTNESS:

Assistant City Attorney, Norfolk

NORFOLK COLLEGIATE SCHOOL

By: _____
Name: _____
Title: _____